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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMY LEE BLUNT,

Defendant and Appellant.

A118573

(Alameda County
Super. Ct. No. 146759)

Defendant Jimmy Lee Blunt was convicted of first degree murder. The victim's abandoned car was found a block from defendant's home and her body a block from his grandmother's home, and calls had been made from her cell phone to defendant's family members on the night of her murder. A search of defendant's room turned up ammunition of the type used in the killing. When police questioned defendant after his arrest, he claimed to have been abducted by unknown, masked men on the night of the murder. After several interview sessions stretching over 15 hours, defendant admitted having shot the victim, although he claimed that the unknown men had forced him to do so.

Defendant contends that certain of his statements to police were involuntary and should not have been admitted at trial, the trial court improperly excluded evidence of possible third party culpability, and the trial court inadequately responded to a jury question during deliberations. We affirm.

I. BACKGROUND

In an information filed February 11, 2004, defendant was charged with one count of murder. (Pen. Code, § 187, subd. (a).) As enhancements, the information alleged that defendant had personally and intentionally discharged a firearm, causing great bodily injury, within the meaning of Penal Code sections 1203.6, subdivision (a)(1), 12022.5, subdivision (a)(1), and 12022.53(b) to (d), and had suffered a prior strike conviction (Pen. Code, §§ 667, subd. (e)(1), 1170.12, subd. (c)(1)).

The evidence presented at trial demonstrated that the victim and defendant were well acquainted; one witness testified that he was “with her a lot, like as a companion.” The same witness saw him at her home on January 11, 2003, the evening she disappeared. The following evening, January 12, her abandoned car was found a block away from defendant’s home. The interior was bloodied, and there were four gun cartridge casings found in the car. Police also found the victim’s cell phone in the car. On the evening of January 11, the cell phone had received calls from defendant’s home phone. Between midnight and 2:00 a.m. of January 12, the cell phone had been used to call defendant’s relatives, including his grandparents. Defendant’s fingerprint was found on an exterior door column of the victim’s car. On the morning of the next day, January 13, the victim’s body was found in a trash bin outside a home located down the street from defendant’s grandparents’ home. She had been shot four times, the bullets matching the casings found in her abandoned car. A search of defendant’s bedroom located a bag of the same type of ammunition. Defendant’s mother recalled that shortly after midnight on the morning of January 12, he had made a call and left the house, returning about 2:00 a.m. After defendant’s arrest, as he was being driven to the police station, he tearfully mumbled he had “messed up.”

A. The Interrogation

At the police station, defendant was placed in a small, windowless room containing a table and three chairs. He was then questioned during a session that, including breaks, lasted more than 15 hours. The interrogation began at 3:40 p.m. on the afternoon of January 16, 2003, and continued on and off until 7:00 a.m. the next morning.

Prior to any questioning, defendant was given a meal and provided water periodically thereafter. Around 11:30 p.m., he was permitted to speak with his mother over the telephone. Five separate sessions of questioning occurred, most lasting around two hours, interspersed with breaks lasting from 30 minutes to four hours.¹ Some of the interviews were recorded. When the police first began to interview defendant and again prior to the taped sessions, they gave defendant *Miranda*² warnings or reminded him of his *Miranda* rights. Tapes of the recorded interviews were played to the jury, while officers were permitted to testify about the content of the unrecorded interviews.

During the interview sessions, defendant related several different accounts of his activities on the night of January 11–12. The accounts shared some features, but important details evolved through the course of the interrogation. In the first taped interview, which began at 6:00 p.m., over two hours after the interrogation began, defendant told the officers that early in the evening of January 11 he went to his cousin's home, stayed for awhile, and returned home. Around 1:00 a.m., he rode his bicycle to his grandparents' home to borrow money. On the way, his bicycle was hit from behind by an SUV, and he fell off. The masked occupants of the vehicle forced him inside at gunpoint and told him to drive to his grandparents' house, where he obtained the money. After driving around, they let him out. Defendant thought they had picked him up because of his relationship with the victim. During the next interview, which began shortly after 10:00 p.m., six and one-half hours after defendant had been brought in, he said four masked men with guns forced him into the victim's car. Her body was in the car. The

¹ The police log, admitted into evidence at the suppression hearing, shows that after questioning began at 3:40 p.m., defendant was given a 32-minute break at 5:26 p.m., a 54-minute break at 7:36 p.m., and a 45-minute break at 10:10 p.m. He was then taken from the interview room for an hour at 11:00 p.m. and allowed to phone his mother, before questioning resumed at midnight. Another break began at 2:16 a.m., but it appears defendant fell asleep during the break, and he was permitted to nap for over four hours. The final interview, after he awoke, lasted less than one-half hour. Based on the police log, the total time spent questioning defendant was a little over seven and one-half hours.

² *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

men forced him to touch places in the interior of the car and tried to make him touch the victim's body.

In the third taped interview, which began about 1:30 a.m., 11 hours after defendant was brought in, he told police that he was forced into a vehicle as he was returning home from his cousin's house about 10:00 p.m. on January 11. The victim's body was lying across the back seat of the vehicle. The men stopped the car, put a pillowcase over defendant's head, placed a pistol in his hand, aimed it in the direction of the body, and forced defendant to shoot. The men then forced defendant to drive to an area near his grandmother's home and help them place the body in a trash bin.

The fourth taped interview began at 6:30 a.m., 15 hours into the interrogation, after defendant had been permitted a four-hour nap. Defendant told police that the victim had phoned him and told him to meet her at a mall, where she picked him up in her car. A man in the back of the vehicle ordered the victim to drive and later told her to stop the car. The man handed defendant a gun and told him to shoot the victim. Defendant pointed the gun at her and fired. Defendant then began driving the car, and as he was driving he was forced to shoot the victim again. Later, defendant took her body from the rear of the car and placed it in the trash bin. The interrogation was ended when defendant insisted he had told the officers "the beginnin' to the end" of his activities and no longer wanted to talk to them.

Before trial, defendant moved to suppress his statements to police on the ground they were involuntary. During testimony at the hearing on the motion, one of the interrogating officers observed that defendant appeared "a little nervous, but otherwise, healthy" at the beginning of the interrogation. The officer denied making threats or promises at any time during the interrogation and confirmed that defendant was permitted approximately four hours of sleep between 2:16 a.m. and 6:27 a.m. He denied that defendant appeared tired at any point during the questioning, including before the final session following his nap.

The trial court denied the motion to suppress defendant's statements. After noting the duration of the interrogation, the court observed, "The sad reality is that when one is

investigating a homicide, people are inconvenienced. . . . While [defendant] may not have been a very happy camper and was very unhappy about the circumstances . . . there is nothing in the quality of the tape that indicated his will being overborne, that it was a hostile environment, that he was threatened, that he felt intimidated. There is nothing like that. [¶] . . . The questioning is open-ended. [¶] . . . His tone of voice was one that indicated a willingness. And the nature of the questioning allowed him to expand. [¶] . . . [¶] It's noteworthy that each time the police went back, [defendant] gave more information. [¶] They did not interrupt his sleeping and allowed him to sleep, albeit it may not be the most comfortable way, but he was permitted to sleep. [¶] There is nothing there to indicate that he was not given the necessities of life, including the bathroom, because he was out [of the room]. He wanted to speak with his mother on the phone. They allowed him to do that. . . . [T]here is nothing either on the tapes themselves or in the evidence that is before me that . . . in any way compelled him to talk to the police against his will, rather that it was voluntarily made in all aspects."

B. *The Alleged Exculpatory Testimony*

Prior to trial, the prosecution moved successfully to preclude defendant from presenting a witness, Dwayne Irving, to offer an alternative explanation for the victim's killing. According to defense counsel's offer of proof, Irving, who was acquainted with the victim, had been robbed at gunpoint by two men, Ingram and Johnson. Irving thereafter called the victim and complained about the robbery. One week later, Irving was abducted by Ingram, who told him he had been at the victim's home when Irving called. Ingram told him they were driving to meet Johnson, which Irving took to mean he would be killed. When Irving saw a police car, he jumped from Ingram's vehicle and caught the attention of the officers, who arrested Ingram. Police later told Irving that the victim had alerted them that Ingram intended to kill him. According to counsel, Irving claimed the victim was killed one week after Ingram was freed on bail.

At the hearing, the prosecutor told the court that while Irving may have believed he was told by officers the victim had called them about Ingram, there was no reference to the victim in any of the police files on Ingram. Any such contact normally would have

been noted in the officers' reports. Further, contrary to Irving's belief as expressed in the defense offer of proof, Ingram had not been released from jail at the time of the victim's killing; rather, he had been in custody continuously since July 2002. Johnson was, however, on bail at the time of the killing.³

The trial court tentatively ruled Irving's testimony inadmissible. The court acknowledged the evidence demonstrated that "other people might have a motive" to kill the victim. However, the court noted, the person with the strongest motive was Ingram, who was incarcerated at the time of the victim's death. Although that left Johnson, the court reasoned that there was little to link him to the victim, since it was Ingram who had heard the telephone call and abducted Irving. The court agreed to reconsider admission of the testimony if defendant could provide some evidence, other than Irving's hearsay contention, that the victim actually told the police about Ingram. In the absence of such evidence, the court viewed the connection between Johnson, the only available killer, and the victim as too speculative.

C. The Jury Question

During its deliberations, the jury sent a note asking the court "to explain the difference between first and second degree murder." Following an off-the-record conversation with counsel, the trial court paraphrased previously given instructions on the elements of murder and the different mental states necessary for first and second degree murder. After responding to the note, the court asked defense counsel whether he had any comment about the response. Counsel said he did not.

The jury convicted defendant of first degree murder and found the firearms enhancement allegations to be true. On motion of the prosecution, the court dismissed the prior conviction allegation. Defendant was sentenced to two consecutive terms of 25 years to life.

³ In the transcript of an earlier telephone call made by Irving to the police, he correctly identified Johnson, not Ingram, as the person who had been released on bail prior to the victim's death.

II. DISCUSSION

Defendant contends that his conviction should be reversed because (1) the third and fourth of his recorded statements to police were involuntary and should not have been admitted, (2) the trial court erred in excluding Irving's testimony suggesting an alternative killer, and (3) the trial court should have reiterated the instruction regarding the significance of duress when responding to the jury's question about the distinction between first and second degree murder.

A. *Voluntariness of Defendant's Statements*

The due process clause of the Fourteenth Amendment precludes the admission of any statement obtained involuntarily from a criminal suspect through state compulsion. (*People v. DePriest* (2007) 42 Cal.4th 1, 34.) The burden is on the prosecution to demonstrate that any statements of a defendant offered at trial were given voluntarily, rather than through compulsion. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1093, disapproved on other grounds in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) The test for voluntariness “ ‘examines “whether a defendant’s will was overborne” by the circumstances surrounding the giving of a confession.’ ” (*Guerra*, at p. 1093.) The court must take into consideration “ ‘the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.’ ” (*Ibid.*) “Characteristics of the accused which may be examined include the accused’s age, sophistication, prior experience with the criminal justice system and emotional state.” (*In re Shawn D.* (1993) 20 Cal.App.4th 200, 209.) Aspects of the conduct of the interrogation to be considered include whether promises, threats, or intimidation were used to induce the statement, whether the defendant was deceived by police (*id.* at pp. 209–210), whether the defendant’s will was broken through a denial of “creature comforts” or through trickery (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 58; *People v. Esqueda* (1993) 17 Cal.App.4th 1450, 1484–1486), and whether the statement was induced by repeated and prolonged questioning during an interrogation of long duration. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226.)

We review independently a trial court's determination that an admitted statement was voluntarily given, but we accept any factual findings of the trial court if they are supported by substantial evidence. (*People v. Richardson* (2008) 43 Cal.4th 959, 992–993.)

Defendant does not claim that his personal characteristics made him particularly susceptible to police misconduct.⁴ Nor is there any claim that the officers used unfair techniques in their questioning; there were no threats or promises made, and the officers made no attempt to intimidate defendant through their questioning. Rather, defendant claims that a “coercive atmosphere . . . was brought about by [defendant's] fatigue, by his isolation in an interrogation room for fifteen hours, by the persistence and insistence of the interrogators, and by the unwillingness of the interrogators to accept [defendant's] version of events until they had a version to their liking.”

We find no evidentiary basis for defendant's contention that his statements were involuntary. The officers were persistent, continuing to question defendant for an extended period of time, they were not *insistent*. This is not a situation in which the officers refused to accept a defendant's denials and badgered him or her until a confession emerged. Rather, defendant's story evolved as the night progressed, suggesting both that he had not given a full and accurate account and that he would reveal more of the truth under further questioning. The officers were therefore justified in persisting in questioning defendant until a fixed story emerged, and they did so without browbeating or otherwise attempting to intimidate him. Further, defendant was not wholly isolated, despite being held alone in a small room. He was taken from the room for a period of about an hour at 11:00 p.m., during which he was permitted an extended telephone call with his mother.

⁴ Defendant was 20 years old at the time, a young adult, and had some, although limited, experience with the criminal justice system while a minor. While the officers' testimony makes clear that defendant was emotionally upset at times before and during the interrogation, there was no other reason to believe he was unusually susceptible to police pressure.

While defendant was questioned over a 15-hour period, we find little evidence that fatigue was a factor in defendant's later statements. Defendant was given several extended breaks, lessening the impact of the long duration. Although defendant stated at the outset of the first taped interview that he was tired, he never repeated that complaint during the recorded sessions. On the tapes, he speaks quietly, but, as the trial court noted, his voice is alert and responsive. Throughout the four recorded sessions, he answered questions promptly, spoke fairly quickly, and gave narrative, not monosyllabic, answers, without showing signs of fatigue.⁵ When defendant fell asleep after the third recorded interview, the officers allowed him to nap.

Defendant was also given food and water during the interrogation. We agree with the trial court that there is no reason to believe, as defendant implies, that he was not given bathroom breaks. The officers permitted repeated breaks during which defendant could have been escorted to the bathroom. Had he been deprived of bathroom opportunities, one would expect him to have commented on that fact during the interviews.

There is also evidence that defendant continued to exercise his will throughout the interrogation. Prior to the interview that ended in the third recording, defendant was allowed to leave the interview room. During that time, he noticed a third police officer sitting outside the room and, prior to the third recorded interview, asked for that officer to participate in the questioning, a request that was granted. This suggests that even at the hour of 1:00 a.m., defendant was voluntarily participating in, and even seeking to control, the interrogation. Further, it was defendant himself who terminated the questioning, after he had become frustrated with the officers' repeated questions, implicitly suggesting that

⁵ Defendant's attitude at the beginning of the fourth recorded session was more reserved, but this appears to have been a result of upset caused by his own admissions and his frustration with the interview process, rather than fatigue. After a fairly short time, defendant said that he no longer wanted to talk to the officers, and the interview ended.

throughout the interrogation he recognized his ability to end the interrogation and chose voluntarily to continue.

Defendant's interrogation was not materially different from the interrogation found constitutional in *People v. Hill* (1992) 3 Cal.4th 959 (overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13 (*Hill*)). In that case, the defendant was questioned for eight hours over a 12-hour period, lasting from mid-morning to late at night. (*Hill*, at pp. 979–981.) These figures are virtually identical to those from defendant's interrogation, excluding the time he was asleep. Relying on the “ ‘totality of the circumstances’ ” test, the Supreme Court rejected the defendant's contention that the long duration of the interrogation alone was sufficient to deem his statements involuntary. (*Id.* at p. 981.) In finding the interrogation not to be coercive, the court cited the frequent breaks and food, drink, and restroom privileges given to the defendant and the fact that he was not “unduly distressed or subjected to any abusive or improper interrogation techniques.” (*Ibid.*) “Most important,” the court noted, “defendant never once requested any break in the interrogation or asked that it be terminated. This weighs heavily against his claim of excessively long questioning. He was twice given *Miranda* warnings, which he acknowledged both times in writing. The record reflects that he was fully aware he could terminate the interrogation at any time. For example, the next morning, . . . when [an officer] attempted to resume questioning, defendant invoked his *Miranda* rights. Interrogation ceased immediately.” (*Ibid.*) All of the factors cited by the court in *Hill* were present here, including the “most important” factor: defendant's failure to request that the interrogation cease. *Hill* is materially indistinguishable and is, therefore, controlling.⁶

⁶ Only one factor mentioned by the court differentiates this situation from *Hill*. In that case, the court noted that the interrogation was conducted during normal waking hours. (*Hill, supra*, 3 Cal.4th at p. 981.) In contrast, the latter two of defendant's interviews were conducted in early morning hours. As discussed above, however, defendant was given breaks, does not seem tired on the tapes, and was permitted to nap. In the absence of any request by defendant to cease questioning, we do not believe this difference is sufficient to require a different result.

Even if the third and fourth recorded statements were improperly admitted, there would be no basis for reversing defendant's conviction because their admission was not prejudicial under the "harmless beyond a reasonable doubt" standard. (See *People v. Coffman and Marlow*, *supra*, 34 Cal.4th at p. 60.) The evidence demonstrated that defendant was acquainted with the victim and had been in her company earlier on the evening she was killed. Her car was found abandoned within a block of his home bearing his fingerprints, and her body was found within a block of his grandparents' home. He had ammunition in his closet of the same type used in the killing. On the early morning of the killing, defendant was absent from his home, and no one could account for his whereabouts. During that time, the victim's cell phone was used to make calls to defendant's family members. Finally, defendant did not challenge the admission of his first two statements, during which he acknowledged being in the presence of the victim's body that night. The evidence that he was the killer was thus very strong. Admission of the third and fourth recorded statements merely corroborated the otherwise persuasive evidence, in particular the unexplained presence of ammunition in his closet, that defendant fired the shots that killed the victim.

B. *Exclusion of Allegedly Exculpatory Evidence*

“ ‘[T]he standard for admitting evidence of third party culpability [is] the same as for other exculpatory evidence: the evidence [has] to be relevant under Evidence Code section 350, and its probative value [cannot] be “substantially outweighed by the risk of undue delay, prejudice, or confusion” under Evidence Code section 352.’ [Citations.] ‘To be admissible, the third-party evidence need not show “substantial proof of a probability” that the third person committed the act; it need only be capable of raising a reasonable doubt of defendant’s guilt. At the same time, we do not require that any evidence, however remote, must be admitted to show a third party’s possible culpability. . . . [E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant’s guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime.’ ” (*People v. Hamilton* (2009) 45 Cal.4th 863, 914;

People v. DePriest, *supra*, 42 Cal.4th at 43.) Accordingly, third party culpability evidence that “has no tendency to establish any relevant fact” is properly excluded. (*People v. Page* (2008) 44 Cal.4th 1, 37.) We review the trial court’s ruling on the admission of third party culpability evidence for abuse of discretion. (*People v. Lewis* (2001) 26 Cal.4th 334, 372–373.)

We find no abuse of discretion in the exclusion of Irving’s testimony. Although defendant contends the testimony demonstrated that another person had “a motive, the means and an opportunity” to have committed the murder, it does not. While the proffered testimony may have tended to prove Ingram had a motive, he was in jail and he had neither means nor opportunity to murder the victim. While Johnson was not in custody, Irving’s testimony provided no evidence of his location on the night of the killing. Whether he had the means and an opportunity to kill the victim is therefore unknown. More important, the evidence did not establish a motive for Johnson. Crediting Irving’s hearsay testimony, it would establish the victim had tipped off the police that Ingram, or possibly Ingram and Johnson, intended to harm Irving. There was no evidence, however, that Ingram knew the victim had done this. The phone call Ingram purportedly overheard was between Irving and the victim, not the victim and the police. Irving’s testimony therefore reveals no more than that Ingram knew the victim had been told he and Johnson had robbed Irving. This was hardly motive for Ingram to murder the victim. Further, there was no evidence Ingram ever told Johnson that the victim knew about the Irving robbery. As a result, the testimony proffered by defendant lacked any proof that (1) Ingram was aware the victim had alerted the police, (2) Johnson was aware the victim had alerted the police, or even (3) Johnson was aware that the victim knew about the robbery. Accordingly, Irving’s testimony provided no evidence that Johnson had *any* motive to kill the victim, or even that he knew of her. The evidence was insufficiently probative of a material fact to justify its admission, and it certainly did not raise a reasonable doubt about defendant’s guilt.

Further, the evidence did not, as required for the admission of third party culpability testimony, connect either Ingram or Johnson to the actual perpetration of the

crime. As noted, Ingram was in jail on the night of the murder, while Johnson's whereabouts were unknown. Defendant contends that his own testimony of abduction links one or both of these men to the crime, since the presence of others with a motive to kill the victim "support[ed] [his] assertions of having been kidnapped and forced to fire the gun." Irving's story, however, was *inconsistent* with defendant's statements to the police. Defendant told the police that the masked, unidentified men who abducted him and forced him to kill the victim kept demanding to know where something—either money or drugs—was located. Defendant speculated from the abductors' comments that the victim had taken drugs or money from them and they believed he knew where it was located. For example, in the third recorded interview defendant told the police, "I guess she owed him some money or . . . offa some drugs . . . she was doin' . . . she wasn't payin' or she was getting credit off of it."⁷ In contrast, Irving's proposed testimony with respect to the motive of Ingram or Johnson had nothing to do with the victim's having obtained money or drugs. Rather, they would have been trying to silence her about the Irving robbery or seeking revenge for the victim's telling the police that Ingram was trying to harm Irving. Because defendant's statements suggested that his abductors were interested in recovering money rather than silencing a witness, they provided no support for the conclusion that Johnson was one of the masked men. As a result, there was no testimony that linked Ingram and Johnson to the murder. The evidence was properly excluded.

Defendant contends this exclusion deprived him of due process under federal cases holding that a defendant has a due process right to present his defense. The short answer to this contention is that the California standard for the admission of third party culpability evidence has been found consistent with constitutional requirements. (*People*

⁷ Similarly, from defendant's last recorded interview:

"Q: All right. Did [the primary abductor] make you ask [the victim] for the money first [before ordering her to be shot]?"

"A: Yeah, cuz he thought that I . . . that I hid it somewhere, or she gave it to me to hide."

v. Hall (1986) 41 Cal.3d 826, 835.) Further, contrary to defendant’s argument, the federal cases on which he relies do not demand the indiscriminate admission of all evidence claimed by a defendant to be exculpatory. All of them, at least implicitly, require third party culpability evidence to be sufficiently probative to satisfy the legal requirement for relevance. Thus, in *Chambers v. Mississippi* (1973) 410 U.S. 284, for example, the United States Supreme Court reversed the trial court’s exclusion of a third party’s statements to three different witnesses that he, not defendant, had committed the murder. (*Id.* at pp. 292–293.) The other cases cited by defendant are similar. (*Green v. Georgia* (1979) 442 U.S. 95, 97 [excluded evidence “highly relevant to a critical issue”]; *Chia v. Cambria* (9th Cir. 2002) 281 F.3d 1032, 1037 [excluded evidence “highly inculpatory” of third party]; *U. S. v. Vallejo* (9th Cir. 2001) 237 F.3d 1008, 1023 [excluded evidence “highly probative”]; *U. S. v. Crosby* (9th Cir. 1996) 75 F.3d 1343, 1347 [excluded evidence showed third party had opportunity, motive and ability].) Because the Irving testimony provides no evidence that any third party had motive, opportunity, and a connection to the actual murder, it fails this requirement. Its exclusion did not violate defendant’s right to due process.

Because we find this evidence irrelevant, we also conclude that its exclusion was not prejudicial under any standard, including the harmless beyond a reasonable doubt standard for constitutional violations. (*People v. Coffman and Marlow, supra*, 34 Cal.4th at p. 60.)

C. Response to Jury’s Question

Defendant’s claim that the trial court inadequately responded to the jury’s question was waived when his trial counsel failed to request that the court repeat the instruction regarding duress, which defendant now contends was critical. (*People v. Roldan* (2005) 35 Cal.4th 646, 729, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal. 4th 390, 421, fn. 22; *People v. Marks* (2003) 31 Cal.4th 197, 236–237.)

Further, defendant’s contention that the trial court erred in failing to repeat that instruction is without merit. “[Penal Code s]ection 1138 provides that when, after it has begun deliberating, the jury ‘desire[s] to be informed on any point of law arising in the

case, . . . the information required must be given . . . ’ ” [Citation.] This provision imposes on the court the ‘primary duty to help the jury understand the legal principles it is asked to apply.’ ” (*People v. Cleveland* (2004) 32 Cal.4th 704, 755.) “This does not mean the court must always elaborate on the standard instructions. Where the original instructions are themselves full and complete, the court has discretion under section 1138 to determine what additional explanations are sufficient to satisfy the jury’s request for information. [Citation.] . . . But a court must . . . at least *consider* how it can best aid the jury. It should decide as to each jury question whether further explanation is desirable, or whether it should merely reiterate the instructions already given.” (*People v. Beardslee* (1991) 53 Cal.3d 68, 97.) We review the trial court’s response to a jury question for abuse of discretion. (*People v. Smithey* (1999) 20 Cal.4th 936, 985.)

The jury asked the court “to explain the difference between first and second degree murder.” The trial court did this by paraphrasing its instructions on the elements of murder and the different mental states necessary for first and second degree murder. Defendant contends this was an incomplete response because “[o]n the facts and circumstances of this case, and in view of the lengthy debate over what instruction to give with regard to evidence of duress, there could reasonably have been but one focus of the jury’s inquiry. That focus was on how evidence of duress fit into the jury’s evaluation of the issues of premeditation and deliberation.”

We find no abuse of discretion in the trial court’s failure to address duress. Defendant’s contention is based in part on the fact that the parties debated extensively the proper instruction on duress. The jury, however, did not share in this debate, and there is no reason to assume the jury would be preoccupied by the issue merely because counsel debated it. Nor do “the facts and circumstances” necessarily suggest that the jury was asking about duress. Given the substantial amount of evidence presented to the jury, it is possible the question reflected a general confusion about the distinction between the degrees of murder, rather than confusion about the role of duress. In that regard, it is noteworthy that the jury did not mention duress in its question, although the jurors easily could, and presumably would, have asked expressly about duress if that was the focus of

their inquiry. The trial court did not err in assuming the jury expressed itself fully and clearly in asking merely for the legal differences between the two degrees of murder.

Defendant's contention is premised in part on language in *People v. Thompson* (1987) 195 Cal.App.3d 244, in which the court noted that the trial court had "failed to consider what was motivating the jury's questions." (*Id.* at p. 251.) Because the trial court had not thought through the implications of the jury's question in the context of the case, the *Thompson* court held it erred in giving an incorrect, yes-or-no answer to the jury's question about a legal issue that, in the context of the case, was complex. (*Id.* at pp. 250, 251.) In contrast, this jury's question was straightforward, and the trial court did consider its response. The court did not abuse its discretion in providing a response that was as straightforward as the jury's inquiry.

III. DISPOSITION

The judgment of the trial court is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Graham, J.*

* Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.